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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/147167

PRELIMINARY RECITALS

Pursuant to a petition filed February 07, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin in regard to Medical Assistance, a hearing was held on April 24, 2013, at Waukesha, Wisconsin.

NOTE: Subsequent to a rehearing request, the parties submitted copies of a December 26, 2012, acknowledgement of a receipt of a grievance and a January 18, 2013 response to the grievance. They have been marked as Exhibits 15 and 16 respectively. Ms. Schmitz also submitted an e-mail indicating that there is no written grievance and a second e-mail with the 2012 contract, specifically citing to pages 73 and 74. The e-mail concerning the grievance has been marked as Exhibit 17 and pages 73 and 74 of the contract have been marked as Exhibit 18.

The issue for determination is whether Care Wisconsin correctly denied Petitioner's request for placement in a Residential Care Apartment Complex (RCAC).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Joan Schmitz
P O Box 285
Hales Corners, WI 53130-0285

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Care Wisconsin staff:

Carmen Lord, Member Rights Specialist,
Kim Kuntz, Assistant Program Manager,
Linda Zilles, Care Manager,
Amy Allen, RN Care Manager

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 81-year-old resident of Waukesha County, participating in the Family Care program.
2. On December 5, 2012, Petitioner requested to be moved to Wilkinson Woods, a Residential Care Apartment Complex (RCAC). (Exhibit 9)
3. On December 18, 2012, Care Wisconsin sent Petitioner a Notice of Action denying her request. (Exhibit 9)
4. On or about December 26, 2012, Petitioner filed a grievance with Care Wisconsin. (Exhibit 15)
5. On January 18, 2013, Care Wisconsin sent Petitioner a letter indicating that it was upholding its decision to deny her request for services at a RCAC. (Exhibit 16)
6. Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on February 7, 2013.
7. Care Wisconsin previously offered Petitioner a placement at Wilkinson Woods in the years preceding 2012, but Petitioner declined the request. (Testimony of Linda Zilles)
8. Petitioner used to spend her weekends visiting with her brother-in-law, but he recently sold his home and moved to Wilkinson Woods. (Testimony of Petitioner)
9. Petitioner's health has declined since she had a hip revision last year and she is suffering from chronic pain and increased difficulty in moving about her apartment. Petitioner ambulates with a walker and has an unsteady gait. (Testimony of Petitioner; See also Exhibit 14)
10. Petitioner currently receives supportive home care to take care of laundry, cleaning, shopping and delivery of her prescription medication; she has meals delivered 5 times per week and she has medical transportation to and from medical appointments. (Testimony of Linda Zilles; Exhibit 14)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case, Care Wisconsin, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the

department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

The aforementioned administrative code further notes that residential services in an RCAC are among the services that typically will be required to be available. *Id.*

Wis. Admin Code DHS 10.44(2)(e) states that the CMO shall use assessment protocols that include a face-to-face interview with the enrollee and that comprehensively assess and identify all of the following:

1. The needs and strengths of each enrollee...
2. Long-term care outcomes that are consistent with the values and preferences of the enrollee in at least the following areas:
 - a. Safety.
 - b. Best possible health.
 - c. Self-determination of daily routine, services, activities and living situation.
 - d. Privacy.
 - e. Respect.
 - f. Independence.
 - g. Social roles and ties to family, friends and community.
 - h. Educational and vocational activities.
 - i. Desired level and type of participation in community life.
 - j. Spiritual needs and desired participation in religious activities.

Emphasis added

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

Petitioner testified that she no longer wishes to be completely independent and would like to live at Wilkinson Woods, a Residential Care Apartment Complex (RCAC). Petitioner testified that she is afraid to be alone in her apartment at night; that she is getting older and no longer has the energy to live on her own or to go out about the town; and that she would like to live somewhere she can more easily socialize with other people.

Care Wisconsin denied her request for two reasons. First, Care Wisconsin indicated that its current policy does not allow Petitioner's placement at Wilkinson Woods. Second, Care Wisconsin asserted that a more

cost effective means of reaching Petitioner's goals is to keep Petitioner in her own apartment with increased supportive home care, a medic alert bracelet, daily delivered meals and adult day services.

Care Wisconsin's Program Guidelines for Residential and Nursing Home Placement

In prior years, Care Wisconsin has found placement at Wilkinson Woods to be appropriate and offered the placement to Petitioner, but she declined. The only things that have changed are that Petitioner's health has declined somewhat post hip replacement surgery, she has gotten older and Care Wisconsin suddenly changed its placement guidelines February 1, 2012.

At the hearing, the interdisciplinary team from Care Wisconsin was asked the legal basis for its current placement guidelines. No one on the team cited an administrative rule, state statute or federal regulation upon which its guidelines were based and I have found no direct basis in law for its policy guidelines.

Consequently, I am not persuaded that the placement at Wilkinson Woods was no longer appropriate, just because of seemingly arbitrary policy changes implemented by Care Wisconsin.

Cost Effectiveness

The administrative rules state that placement at an RCAC must be a cost-effective means of achieving the enrollee's desired outcomes. However, no one submitted documentation proving how much the supportive home care, medic alert services, medical transportation, delivered meals and adult day services cost versus the cost of placement at Wilkinson Woods. So, there is no basis in the record to find that one would be more or less cost-effective than the other.

Further, given Petitioner's difficulties with her hip and knee and the fact that she has an unsteady gait and is likely at increased risk of falling, one has to question whether it is more cost-effective to address potential injuries after a fall, assuming Petitioner is still conscious enough to use the medic alert bracelet, or whether it is more cost-effective for Petitioner to live somewhere where a fall is more likely to be prevented. One must question whether it is more cost-effective to deal with injuries occurring because Petitioner was unable to evacuate out of her apartment building in a hurry, because of her walker, or whether it would be more cost effective to have her in an assisted living facility, where she may have help evacuating in an emergency. In addition, an item is not cost-effective, if it is not utilized and staff from Care Wisconsin indicated that Petitioner was not using a prior medic alert monitor that was provided to her and has no desire for adult day services, because she is too tired to go out and about on a daily basis.

Even assuming arguendo that keeping Petitioner in her current placement is more cost effective, there remains the question of whether keeping Petitioner in her current placement helps her be as independent as she desires to be – per Wis. Admin Code DHS 10.44(2)(f). The answer to that is “no”. Indeed, Petitioner's individualized service plan indicates that Petitioner wishes to live, “in a place where there are more people and activities available” and that she would prefer to live at Wilkinson Woods, rather than live in her own apartment with additional supports in place. (See Exhibit 14, pg. 7) I note that all of the supports suggested by Care Wisconsin keep Petitioner isolated in her apartment, with the exception of the adult day services and medical transportation. This is also contrary to Petitioner's desired outcomes.

CONCLUSIONS OF LAW

Care Wisconsin incorrectly denied Petitioner's request for placement at Wilkinson Woods RCAC.

THEREFORE, it is

ORDERED

That Care Wisconsin approve Petitioner's request for placement at Wilkinson Woods, RCAC within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

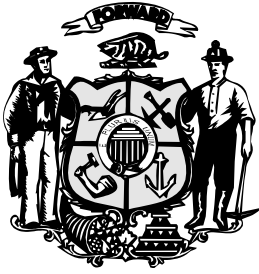
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of April, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 30, 2013.

Care Wisconsin
Office of Family Care Expansion
joan.schmitz@wisconsin.gov